IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1854 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADHAVPURA MERCANTILE CO-OPERATIVE BANK LIMITED

Versus

KETAN V PAREKH

Appearance:

1. Criminal Misc.Application No. 1854 of 2002

MS AVANI S MEHTA for Petitioner No. 1

MR AD SHAH for Respondent No. 1

MR MUKESH R SHAH for Respondent No. 2

MR AD OZA, PP for Respondent No. 3

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 30/10/2002

C.A.V. JUDGEMENT

1. Heard Mr.K.G.Vakharia learned counsel for Ms.Avani S. Mehta, learned advocate for the applicant, Mr.A.D.Shah, learned advocate for the respondent No.1, Mr.Mukesh R. Shah, learned advocate for the respondent No.2 and Mr.A.D.Oza, learned PP for the respondent No.3 - State.

2. The applicant, original complainant - The Madhavpura Mercantile Co-operative Bank Limited [hereinafter be referred to as the "MMCB"], through Administrator had filed one complaint against the original accused, i.e. Shri Rameshchandra Nandlal Parikh, Ex-Chairman, Shri Devendra Pandya, Ex-Chief Executive Officer and Managing Director of the applicant Bank and Shri Jagdish Pandhya, Ex-Branch Manager of the applicant Bank for the offence punishable under Sections 120(B), 405, 406, 408, 409, 420 of the Indian Penal Code read with Section 35(A) of the Banking Regulations Act, 1949. The police had arrested all the accused named in the complaint and as the investigation was not completed within the period of 90 days, the said accused came to be released on bail, in view of the default in submissions of the chargesheet as required under Section 167(2) of the Criminal Procedure Code. The Reserve Bank of India also lodged a criminal complaint before the Court of Metropolitan Magistrate, Ahmedabad against the Bank and its Chairman and Managing Director on 14.03.2001 under Section 46 of the The Banking Regulations Act, 1949 read with Section 58(B) of The Reserve bank of India Act, 1934 for having made false statement with the Reserve bank of India.

3. According to the petitioners, the depositors also made deposits with the Bank upon the trust that the office bearers will conduct Banking business in the best interest of depositors and the Bank in accordance with rules, regulations and law and their deposit amount is safe in the Bank. The Reserve Bank of India has issued directives, from time to time to protect the interest of depositors and has put restrictions on advances also. The office bearers of the bank were duty bound to allow directives and provisions of law in conducting banking business. Normally the Bank was bound by law and was bound to maintain credit deposit ratio which is 65%. The Bank could not lend money more than the loanable funds. In the present case, they have conducted the banking business in violation of the directives, circulars and law and lend money to their favoured companies, firms, parties, by committing breach of RBI's directive and thereby they have committed offences as stated in page 3 of the compilation.

4. Having regard to the present state of affairs, in the complaint, it was mentioned that Shri Ketan V. Parekh of Mumbai through his various companies had unauthorisedly and fraudulently withdrawn the amount of Rs.888.28 Crores as on 31.3.2001 from the applicant Bank in collusion and conspiracy with the aforesaid persons, whose names are shown in the complaint. In pursuance of the order dated 2.5.2001 passed by the Division Bench of this Court [Coram : Hon'ble The Chief Justice Mr.D.M.Dharmadhikari & Hon'ble Justice Mr.P.B.Majmudar], the Investigation of the aforesaid complaint was handed over to the respondent No.2, C.B.I. [B.S.& F.C.], Mumbai registered at R.C.No.4(E)/2001.

5. That the petitioner has submitted that Shri Ketan V. Parekh had applied for bail before the learned Chief Metropolitan Magistrate, Ahmedabad. The learned Chief Metropolitan Magistrate, by her order dated 24.8.2001 released the said accused namely Shri Ketan V. Parekh on conditional bail, the main conditions are as follows :-

[a] The accused has to deposit the amount of Rs.16,41,69,000-00 in the Mandvi Branch of M.M.C.B. accounts against his dues, as it is the amount of small depositors up to Rs.5,000-00 within three to six months from the date of order.

[b] Remaining amount of small depositors upto Rs.1 lac, amounting to approximately Rs.380 Crores be deposited by the accused within three years, in his account from the date of order.....

6. It is the case of the applicant that after extension period of six month, the respondent No.1 Shri Ketan V. Parekh has deposited Rs.16,41,69,000-00. However, there was no justification for grant of time between 3 to 6 months. There is a breach of the condition as amount was not deposited by the respondent no. 1, therefore, grant of the bail should have been cancelled. However, in view of the aforesaid order the police authorities have not seriously taken any action, as if the bail continues.

7. It is the case of the applicant that the grant of three years time for the payment of Rs.380.00 Crores is also highly improper in view of the fact that total dues are Rs.888.28 Crores as on 31.3.2001 plus interest. It is the case of the applicant that the learned Chief Metropolitan Magistrate has erred in directing the cash

security of Rs.2-00 Lacs and solvent security of Rs.10-00 Lacs. In view of the facts and circumstances of the case, the applicant - Bank has prayed in the application to quash and set aside the impugned order dated 24.8.2001 passed by the learned Chief Metropolitan Magistrate, Ahmedabad for granting the bail to respondent NO.1 - Shri Ketan V. Parekh. The applicant has further prayed that to direct the respondent No.2 to arrest the respondent No.1 and commit him to custody.

8. Learned Counsel Mr.K.G.Vakharia for Ms.Avani S. Mehta, learned advocate for the applicant submitted that by not fulfilling the condition as ordered by the trial court, Shri Ketan V. Parekh, requested for extension of time, which was earlier rejected by the learned Chief Metropolitan Magistrate and learned Additional Sessions Judge, Ahmedabad. Ultimately this Court granted time. In view of the compliance thereof, the respondent No.1 deposited the total amount of Rs.16,41,69,000.00 at the later stage. In view of the aforesaid position, the time granted by the trial Court to deposit Rs.380 Crores is nothing but an eye wash and till this date not a single amount has been deposited by the respondent No.1, within three years as directed by the trial Court. In submission of Mr.Vakharia, learned counsel for the petitioner instead of the time of three years, time bound program for depositing the amount of Rs.380.00 Crores in regular intervals should have been ordered by the trial court. Therefore, no time should be given to the respondent No.1 for depositing Rs. 380 crores, in view of the fact that the respondent No.1 has deposited Rs.16,41,69,000-00 in two installments. The condition No.2 which favoured to the respondent No.1 and which is against the interest of the depositors. Without waiting for the respondent No.1 to submit at the end of three years, his inability to deposit any amount,the bail granted to him requires to be cancelled and should be arrested by respondent no. 2 CBI, immediately.

9. Against the aforesaid submissions of Mr.Vakharia, learned counsel for the applicant - Bank, Mr.A.D.Shah, learned advocate for the respondent No.1 - Shri Ketan V. Parekh has submitted that the facts emerging on record do not justify cancellation of the bail on the charges of conspiracy. The original complaint, which was filed on 21.4.2001 by the complainant against the original accused i.e. Rameshchandra Nandlal Parikh, Ex-Chairman, Devendrabhai B. Pandya, Chief Executive Officer & Managing Director and Jagdishbhai Bhogilal Pandya, Branch Manager, Mandvi Branch, Mumbai Shri Ketan V. Parekh was not holding any post in management of MMCB. Prima facie,

Sections 405 and 409 are not attracted. Disbursing of loan to the customers is not the entrustment of property and its disposal. Furthermore, persons, working in the Bank, are not Bankers. The relationship between Bank and Customer is that of Creditor and Debtor. In view of the fact that there is no breach of trust, the accountants were neither public servants nor Bankers nor their agents. The aforesaid arguments were advanced by Mr.A.D.Shah, learned advocate for the respondent No.1 against the arguments of Mr.Vakharia, learned counsel for the applicant to the effect that there is a relationship of entrustment of property to the Bank and accordingly there is a relationship between the parties that of trustee and beneficiary.

10. In support of the aforesaid submissions, Mr.A.D.Shah, learned advocate for the respondent No.1 has relied upon the following citations :-

[1] Gopesh Chandra Pal V. Nirmal Kumar Das Gupta, reported in AIR (37) 1950 Calcutta 57;

[2] Nadir Ali Barqa Zaidi V. The State of U.P., reported in AIR 1960 Allahabad 103;

[3] Attorney General of Canada V. Attorney General of the Province of Quebec, reported in AIR (34) 1947 Privy Council 44;

[4] Miss Trilochan Banga V. Shri S.K.Kataria, reported in 1986(1) Crimes 11;

11. Mr.A.D.Shah, learned advocate for the respondent No.1 has submitted that for releasing the accused on anticipatory bail the order for deposit of amount as part of the condition should be reasonable amount. As such, there should not be any condition ordered by the Court for releasing any accused on bail, however, if court desires so, then amount ordered should be reasonable and in proportionate to the guilt as alleged. Mr.A.D. Shah, learned advocate for the respondent No.1 has shown me purshis dated 20.8.2001, appears that there is no undertaking or any words to deposit amount of Rs.380.00 Crores. So far as the point that no condition should be imposed while granting bail to any accused is concerned, Mr.Shah has relied upon the following decisions :-

[1] Amarjit Singh V. State of NCT of Delhi, reported in JT 2002 (1) SC 291;

[2] M. Sreenivasulu Reddy V. State of Tamil Nadu,

reported in JT 2000 (Suppl.1) SC 585;

[3] Sandeep Jain V. National Capital Territory of Delhi rep. by Secretary Home Deptt., reported in JT 2000 (1) S.C. 166;

12. So far as the ground of cancellation of bail is concerned, Mr.A.D. Shah, learned advocate for the respondent No.1 has submitted that in number of cases the Apex Court as well as this High Court gave direction under what circumstances the cancellation of bail, should be ordered. The ground of cancellation of bail should be cogent, convincing and truthful. In support of the aforesaid submissions, Mr.Shah has relied upon the the following decisions :-

[1] Ram Govind upadhyay V. Sudarshan Singh, reported in Jt 2002 (3) SC 185;

[2] Prahlad Singh Bhati V. N.C.T., Delhi, reported in JT 2001 (4) SC 116; and

[3] Rajnikant N. Desai V. Dy. Supdt. of Police, reported in 1986 Gujarat High Court, 161.

13. It is submitted that merely because, alleged amount involved is more than Rs.380.00 Crores or say Rs. 888 crores there is no ground for cancelling the bail. Under the circumstances, the submission of Mr.Shah that by cancelling the bail order, the respondent No.1 will remain in jail without any reason or would not serve the purpose, for depositing the amount in the Court. Therefore, the present application is required to be dismissed.

14. Against the aforesaid submissions, Mr. M.R. Shah, learned advocate for the respondent No.2 has submitted that during the investigation, Shri Mankar, the Incharge Dy.S.P. of the investigation team came across that respondent No.1 and his firm companies etc. were illegally and unauthorisedly allowed withdrawal in their accounts for more than the sanctioned limits as mentioned in the draft amendment of this petition. In view of the aforesaid circumstances, learned advocate for the respondent no. 2 supported the case of the present petitioner in arresting the respondent no. 1.

15. Mr.A.D.Oza, learned PP appearing on behalf of respondent - State has submitted that it is a fit case for cancelling the bail and order the respondent no.1 to be taken in custody so that the other defaulters who are

not depositing any amount to the bank may get a message that if they don't pay the due amount of the bank, the Court may not grant bail to them also. In short, Mr.Oza, learned P.P. supported the case of the petitioner.

16. I have gone through the applications, authorities relied by Mr.A.D.Shah and original file pertaining to the bail matter, which was in custody of Special Officer [vigilance] and the original application given by respondent No.1 in the trial Court.

17. I have gone through the decisions of this Court as well as the Hon'ble Apex Court. The Court should not go into the merits, which may have impact in the final out come of the decision of the present case. Therefore, I have not discussed the merits of this case. So far as the point regarding the relation of trustee and beneficiary is concerned, the authorities cited before me do suggest that such a relation should be considered as a creditor and debtor only.

18. In the case of M. Sreenivasulu Reddy (supra), wherein the Hon'ble Supreme Court has held in para-6 as follows:-

> "6..... the court while exercising jurisdiction under Section 438 Cr.P.C., must bear in mind and be satisfied that the accused will not abscond or otherwise misuse liberty and this can be ascertained from several factors like conduct of the accused in the past, his assets in the country and so on. While granting such anticipatory bail, though the Court may impose such conditions as it thinks fit, but the object of putting conditions should be to avoid the possibility of the person hampering investigation. The discretion of the Court while putting conditions, should be an exercise of judicial discretion......."

19. In the case of Sandeep Jain [Supra], the offences punishable under Sections 420 and 406 of Indian Penal Code, Magistrate directing release on bail by unusual conditions of bond in sum of Rs.50,000/-- with two solvent sureties. One of the sureties issuing 3 cheques of Rs.2 Lacs in all to complainant and the said cheques were dishonoured and the application given by the complainant, bail of the applicant was cancelled. The accused having been released on bail deposited Rs.50,000/--. The Apex Court held that he cannot be detained in jail endlessly for non-payment of huge amount

and ordered to be released on bail on furnishing bond in sum of Rs.25,000 with two solvent sureties.

20. So far as the cancellation of bail is concerned. In the case of Ram Govind Upadhyay [Supra], the Hon'ble Supreme Court has given guidelines. In the facts and circumstances of the case, the bail of the applicant was cancelled. In my view, there is no reason for this Court to cancel the bail of the respondent No.1, as the grounds of the present application does not fall in any of the ground mentioned in the case of Ram Govind Upadhyay [Supra]. Therefore, I am of the opinion that the petitioner has failed to prove any grounds in his favour, for cancellation of the bail granted to the respondent No.1, Therefore, this application deserves to be dismissed.

21. In view of the aforesaid discussion, the application stands dismissed. Notice is discharged.

[Sharad D. Dave,J.]

vrp